Vorys, Sater, Seymour and Pease LLP

1828 L Street NW • Eleventh Floor • Washington, D.C. 20036-5109 • Telephone (202) 467-8800 • Facsimile (202) 467-8900

[illegible]	In Columbus 52 East Gay Street Post Office Box 1008 Columbus, Ohio 43216-1008 Telephone (614) 464-6400 Facsimile (614) 464-6350 Cable VORYS	In Cleveland 3100 Bond Cleveland Center 1375 East Ninth Street Cleveland, Ohio 44114-1724 Telephone (216) 479-6100 Facsimile (216) 479-6060	In Cincinnati Suite 2100 • Atrium Two 221 East Fourth Street Post Office Box 0236 Cincinnati, Ohio 45201-0236 Telephone (513) 723-4000 Facsimile (513) 852-8484	In Alexandria 277 South Washington Street Suite 310 Alexandria, Virginia 22314 Telephone (703) 549-4282 Facsimile (703) 549-4492

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August 2, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas, Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, SW
Washington, DC 20554

RE: Comments of the Southern California Broadcasters Association, Inc.
MM Docket No. 99-25

Dear Ms. Salas:

Attached please find an original and eleven copies of the "Comments of the Southern California Broadcasters Association, Inc.", to be filed in the above-referenced proceeding.

Please contact the undersigned counsel if you have any questions regarding this submission.

Sincerely yours,

Barry D. Umansky
Attorney for
Southern California Broadcasters
Association, Inc.

Enclosures

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ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	MM Docket No. 99-25
Creation of a Low Power Radio Service	)	RM-9208
	)	RM-9242

COMMENTS OF THE SOUTHERN CALIFORNIA BROADCASTERS ASSOCIATION, INC.

Southern California Broadcasters Association, Inc.
5670 Wilshire Boulevard, Suite 910
Los Angeles, California 90036

Barry D. Umansky
Vorys, Sater, Seymour & Pease LLP
1828 L Street, N.W.
Eleventh Floor
Washington, DC 20036-5104
202-467-8822

Counsel to the
Southern California Broadcasters Association, Inc.

August 2, 1999

EXECUTIVE SUMMARY

Here the Southern California Broadcasters Association ("SCBA") joins the chorus of broadcast and broadcast-related organizations voicing strong opposition to the Commission's proposed creation of low power FM ("LPFM") and "microradio" services. The SCBA supports its position on a number of compelling technical and policy arguments.

Adoption of the Commission's proposals would result in serious technical interference to the signal quality and service areas of the SCBA's members, to the detriment of these stations' audiences, advertisers and public service organizations that rely upon these stations every day. The Commission's proposal to usher in LPFM and microradio facilities through the cut back or abandonment of the current 2nd adjacent-channel and 3rd adjacent-channel interference protections would amount to a clear abdication of the Commission's responsibility to manage the electromagnetic spectrum and ensure efficient use of radio frequencies.

Technical studies today being placed into the record of this FCC rulemaking proceeding underscore the havoc that adoption of the Commission's proposals would have on existing radio reception. Moreover, the record now also supports the fact that LPFM interference would have the potential to imperil the development, let along the future operation, of in-band/on-channel ("IBOC") digital radio by existing stations using existing frequencies.

Particularly in view of the wealth and continued growth of audio alternatives for the American consumer, the Commission must not impair the technical quality of over-the-air FM radio in order to add very little to the program diversity currently and soon to be available from other sources. Plainly, the FCC's proposals fail even the most rudimentary cost/benefit analysis.

A cost/benefit analysis also must be given to the issues of FCC administration and control of any LPFM or microradio service. The LPFM/microradio movement has at its core the radio pirates that have ignored FCC rules and Congressional law for years. Surely the Commission must understand the consequences of it rewarding, and licensing, radio pirates and their supporters. Is this the precedent the FCC wishes to set?

Moreover, one can predict easily the prospect of these entrepreneurs operating outside whatever licensed parameters the Commission ultimately might specify. The future of LPFM would mirror the interference chaos that marked the era leading up to the creation of the FCC and its predecessor agency, the Federal Radio Commission. And these interference costs to the radio service must be added to the significant administrative costs to be borne by the Commission, should it adopt its proposals in this proceeding.

Though it would be an unpopular decision from the perspective of LPFM proponents, the FCC must adhere to its most fundamental mandate from Congress and reject its LPFM proposals. To do otherwise would be constitute an abandonment of rational communications policymaking.

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COMMENTS OF THE SOUTHERN CALIFORNIA BROADCASTERS ASSOCIATION, INC.

I. INTRODUCTION AND SUMMARY

The Southern California Broadcasters Association, Inc. ("SCBA"),[1] by its attorneys, hereby submits its comments in response to the Commission's *Notice of Proposed Rule Making ("Notice")* in the above-captioned proceeding.[2] In the *Notice*, the FCC proposes to establish rules to authorize the operation of new, low power FM ("LPFM") radio stations. It would do so by creating two new classes of low power radio stations, each of which would operate in the existing FM radio band. One new FM station class would operate with 1000 watts effective radiated power ("ERP"); the other would have a 100-watt ERP maximum. In addition to these

[1] SCBA is an association, established in 1937, of more than 100 radio stations in southern California. SCBA membership also includes six television stations in the same region. The SCBA mission includes the provision of information to advertisers, advertising agencies and non-profit organizations about the value and effectiveness of the broadcast radio medium. A complete list of the SCBA radio membership, as of the date of this filing, is included in Exhibit A to these comments.

[2] *See Notice of Proposed Rule Making* in MM Docket No. 99-25, 14 FCC Rcd 247 (1999).

LPFM proposals, the Commission seeks comment on the creation of a "microradio" class of stations operating in the 1-10 watt ERP range.

The SCBA strongly opposes the Commission's LPFM and microradio proposals. On the basis of the many sound technical and policy arguments submitted below, the SCBA urges the Commission to reject all these concepts as completely antithetical to the foremost mission of the Commission – the prevention of destructive interference to communications services. Inherent in the Commission's proposals here is the paring back or even elimination of either or both of the 3rd adjacent-channel and 2nd adjacent-channel interference protections accorded FM stations and the listeners they serve. Absent these interference protections, new LPFM and microradio stations would injure SCBA members in that their coverage areas and service to listeners, advertisers and non-profit organizations would be impaired severely. Even if these technical standards were maintained, SCBA members nonetheless would face service and signal integrity losses due to any introduction of these low power transmitters, as explained below.

Creation of LPFM and/or microradio also would be at odds with the relatively new Section 7 of the Communications Act.[3] That provision directs the Commission to foster the introduction of new technology in its administration of services and electromagnetic spectrum use under its jurisdiction. LPFM would not be a new technology. But, the competitive future of terrestrial broadcast radio may rely on one that would be. In this regard, we shall demonstrate how the proposals advanced in this proceeding have the potential to commit the fatal blow to one genuine new technology: the development and implementation of digital, in-band/on-channel ("IBOC") radio service to be offered by terrestrial radio broadcasters.

[3] Communinications Act of 1934, as amended, 47 U.S.C. § 157.

Indeed, the SCBA believes that this rulemaking proceeding provides the Commission with a unique and timely opportunity to review and reaffirm its expert role in regulating and advancing the broadcast service. In reflecting on these matters, the Commission must view the instant proposals in the context of past and future proceedings that affect the integrity of the broadcast spectrum and the reliability of service enjoyed by the listening public.

Adoption of any of the Commission's proposals would be in sharp contrast to the FCC's actions in several recent rulings – rulings that cast aside concepts much the same as are presented in the Commission's *Notice*. More than once, the Commission has rejected what in essence were proposals for LPFM-like facilities. Examples of such rejections include FCC actions taken in the Commission's reform of the Class D FM service,[4] amendment of its FM translator rules[5] and in its proceedings against an entrepreneur who attempted to employ an FM translator facility as one that, in effect, would originate significant amounts of programming.[6]

The Commission's *Notice* fails to include any technical studies indicating the extent to which its proposals (particularly those that propose reducing or eliminating 3rd adjacent or even 2nd adjacent channel interference protection) would have on the reliability and fidelity of the radio broadcast service currently enjoyed by listeners. Fortunately, the record being generated in this proceeding now includes several studies that portray clearly the intolerable interference that would be created to existing service, as well as to future digital IBOC radio service, if the Commission were to adopt its LPFM and microradio proposals.

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[4] *See Second Report and Order* in Docket No. 20735, 44 RR 2d (P&F) 235 (1978).
[5] *See Report and Order* in MM Docket No. 88-140, 5 FCC Rcd 7212 (1990), *modified*, 6 FCC Rcd 2334 (1991).
[6] *See Turro v. FCC*, 859 F.2d 1498 (D.C. Cir. 1988).

Moreover, even if the Commission were to inaugurate an LPFM service, the laws of physics and the current statutory mandate for the "auction" of new commercial broadcast licenses would ensure that the social goals the Commission seeks to achieve in this proceeding likely would not be met. The immutable effects of co-channel and adjacent-channel interference – even if the Commission unwisely were to pare back its interference-protection criteria – would result in only a relatively small number of LPFM facilities being established in those urban geographic areas where significant ethnic, minority and other special interests are most likely to exist.

The Commission has proposed a number of alternatives[7] by which it might avoid auctions and the congressionally-imposed general mandate for competitive bidding to govern the awarding of "mutually-exclusive" licenses for new commercial facilities. It is far from clear that any of those alternatives would be successful, or even workable. Moreover, even with these non-auction alternatives, it is unlikely that the Commission could reward the large numbers of those who appear to be clamoring for LPFM opportunities. Though the Congress exempted noncommercial facilities from the auction process -- and some LPFM advocates have proposed that LPFM be limited to only noncommercial operation[8] -- it is unlikely that these would be the only types of low power stations sought by LPFM proponents.

And on the issue of LPFM supporters, the agency must not lose sight of the fact the strongest proponents of LPFM and microradio are those who long have been involved in the "pirate radio" movement. FCC personnel, along with myriad U.S. attorneys' offices throughout

[7] *See Notice, supra* note 2, at ¶¶ 103-106.
[8] *Id.* at ¶ 69.

the country, have taken hundreds of actions against pirate radio operators.[9] These enforcement actions have been laudable and have been cheered by broadcasters, the listeners they serve, the Federal Aviation Administration ("FAA")[10] and many other parties.

While these FCC enforcement efforts have been well-justified, the tone of the Commission's *Notice* and statements by the FCC Chairman and certain other commissioners are troubling. It is not lost upon broadcast commentators and others[11] that the Commission's *Notice* may be perceived as being partial toward pirate radio supporters. Indeed, the *Notice* has an almost apologetic tone – perhaps in response to the flood of e-mails and other correspondence solicited by, and then submitted to, the FCC from outraged pirate/LPFM representatives. But, the only apologies here are due from the pirates. The Commission must not make policy decisions that improperly confer rewards to pirates and their supporters at the cost of increased interference to the terrestrial analog FM radio and the digital future of that medium.

The pirate radio basis of this proceeding must also be acknowledged when considering the administrative costs and enforcement dilemmas that undoubtedly would exist under any LPFM or microradio regime. The agency costs of the Commission licensing these facilities would be enormous. Of even greater consequence is the fact that the Commission does not have the resources necessary to enforce whatever licensing and interference-protection rules it might adopt in this proceeding. It does not take much to predict the clear future under any low power

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[9] Almost every week the FCC announces the closure of an unlicensed radio operator. These FCC public notices go on to warn other unlicensed operators about the civil and criminal consequences of their behavior. *See, e.g.*, "FCC Closes an Unlicensed Radio Station in Cheboygan, Michigan," *FCC Public Notice*, Report No. CI99-26, released July 13, 1999.

[10] *See* further discussion of FAA concerns below.

[11] *See* January 28, 1999, "Dissenting Statement by Commissioner Harold W. Furchtgott-Roth" to the Commission's LPFM *Notice*.

radio system: low power entrepreneurs by the score would operate outside their licensed parameters with excessive power and unauthorized tower sites.

By conducting even the most rudimentary cost/benefit analysis – upon the record being developed in this proceeding – the Commission has only one responsible choice: the rejection of its LPFM and microradio proposals. Although terminating this proceeding (without adopting any rule changes) might be unpopular among LPFM proponents and their own supporters, it would constitute rational, technically-based and policy-sound decisionmaking. Such an action also would be congruent with the statutory directives embodied in the Communications Act of 1934, as amended.[12]

Never before has the American public been presented with such a wealth of audio alternatives as it has now and will have in the near future. These listening alternatives range from record numbers of broadcast radio stations to cable radio and near-term inauguration of satellite digital radio service,[13] to webcasting and other audio distribution over the internet. In fact, with these internet options, *anyone* may become a "broadcaster" – a broadcaster with a program product accessible to *anyone, anywhere in the world.* And, with each passing day, the costs of webcasting and other internet distribution and reception of audio fall dramatically. Why should the Commission further add to this never-before-in-humankind abundance of audio alternatives through a set of actions that will work against the technical quality and listener/advertiser service-potential of over-the-air FM broadcasters? Plainly, it should not.

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[12] 47 C.F.R. § 151, *et seq.*

[13] It also is highly likely that the conversion of terrestrial television stations to digital television ("DTV") transmission technology will bring with it the prospect for audio channels accompanying other "ancillary and supplementary" services from excess digital capacity over TV stations' DTV channels.

II. THE FCC ALREADY HAS REJECTED SIMILAR "LOW POWER FM" PROPOSALS

Observers of FCC radio allocations and radio policy decisionmaking over the past several decades note more than a vague element of *déjà vu* when reviewing the Commission's *Notice*. In following its lawful, statutorily-imposed duties, the FCC in recent years has contemplated but then denied approving similar proposals for a low power radio service.

The FCC was established by the Communications Act of 1934; its predecessor agency, the Federal Radio Commission ("FRC"), was created by the Radio Act of 1927.[14] The driving force behind each act of Congress was the need to stem the rampant interference on the AM band – the only mass medium of electronic communication at that time.

In 1924, in addressing the Third National Radio Conference, President Herbert Hoover said "...we must have traffic rules, or the whole ether will be blocked with chaos, and we must have safeguards that will keep the ether free for full development."[15] The interference situation at the time was described as one where "chaos rode the airwaves, pandemonium filled every loud-speaker and the twentieth century Tower of Babel was made in the image of the antenna towers of some thousand broadcasters who, like the Kilkenny cats, were about to eat each other up."[16]

Similar to the statutory mission of the FRC, the FCC was created and instructed to regulate wire and radio communications so as to "make available...a rapid, efficient, Nation-wide, and world-wide wire and radio communications service."[17] In carrying out these duties,

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[14]Federal Radio Act of 1927, 44 Stat. 1162-1174 (1927).
[15]Third National Radio Conference, *Recommendations for Regulation of Radio* (Washington, D.C., October 6-10, 1924), at 1-2.
[16] Chase, Francis, Jr., *Sound and Fury* (New York, 1942), p. 21.
[17] 47 U.S.C. § 151.

the Commission has established, among other things, technical interference standards designed to prevent the reoccurrence of the situation in the 1920s. It also has established complementary policies aimed at fostering interference-free service.

To date, several broadcast interests have filed comments in this proceeding. They recognize that the Commission, in its *Notice*, appears to be losing sight of its most fundamental statutory responsibility. For example, the comments of KRBI Radio observe:

> One of the major tasks that the FCC is charged with is to ensure that our broadcast and other services are maintained in as interference-free environment as possible. Yet, ...it is clear that the Commission is giving serious consideration to abandoning its interest in protecting against interference by looking to add these new low-power stations.[18]

Similarly, Nassau Broadcasting Partners, L.P. ("Nassau") states that it can:

> recognize that the Commission is trying to afford more broadcasting opportunities to those persons and entities that are currently precluded from broadcasting for financial, spectrum scarcity and other reasons. However, the Commission must balance these goals with its historic responsibility of maintaining adequate technical protection to existing service...[19]

In the context of the low power radio, we can point to one long-time FCC official who evaluated the low power concept in the context of the FCC's statutory mandate. Former FCC Commissioner T.A.M. Craven (who, in addition to serving as a commissioner twice -- 1937-44 and 1956-63 -- was once the FCC's chief technical officer), in reviewing a similar plan several decades ago, cautioned against low power broadcasting with an admonition against creating an

[18] Comments of KRBI Radio in MM Docket No. 99-25, filed June 14, 1999, at 1.
[19] Comments of Nassau in MM Docket No. 99-25, filed May 25, 1999, at 2.

"island of service" causing a "sea of interference."[20] The laws of physics have not changed since the time of Commissioner Craven's observation. Low power operation always will create much more interference than it will service.

At one time, the FCC did license 10-watt facilities – primarily to colleges and universities. But, in the late 1970s, the FCC terminated Class D licensing on the ground that Class D stations were an inefficient use of the spectrum.[21] Perhaps influenced by the clamor of LPFM proponents, the Commission has undertaken a review of what it should do with the remaining Class D stations.[22] But. even there the Commission suggests no change in its policy not to license any more Class D stations.[23]

In the 1980s the Commission was presented with another opportunity to rule upon whether it should authorize program-originating low power FM facilities. The issue was the reform of the FM translator service[24] and the review of petitions calling for rules under which FM translators could originate programming.[25] The Commission's attention was turned to FM translators in light of the efforts of certain translator entrepreneurs to employ that service to invade the markets of full-service radio broadcasters.

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[20] Commissioner Craven's remarks were quoted in the joint dissenting statement of Commissioners Robert E. Lee and James H. Quello to the Commission's *Memorandum Opinon and Order and Notice of Program Rule Making* in Docket No. 20418 ("VHF Drop-ins"), 63 FCC 2d 840 (1977).

[21] *See Report and Order in Docket No. 20735, supra* note 4.

[22] *See Notice of Proposed Rule Making and Order* in MM Docket No. 98-93, FCC 98-117, released June 15, 1998, at ¶¶ 59-68.

[23] *Id.* at ¶ 59.

[24] *See Notice of Proposed Rule Making* in MM Docket No. 88-140, 3 FCC Rcd 3664 (1988).

[25] *See, e.g., Second Report and Order* in MM Docket No. 86-112, 7 FCC Rcd 5546(1992); *see also* Petition for Rule Making (RM-3914) filed in 1981 by the Moody Bible Institute of Chicago ("Moody"), and a similar Petition for Rule Making (RM-5219) filed by Moody in 1985. Each sought rule changes that would, *inter alia*, allow for originating FM translators.

In adopting its ruling on these FM translator issues, the FCC tightened the technical interference rules under which FM translators operate.[26] This was done to remedy what was becoming a case of rampant interference to full-service radio stations by FM translators operating under less effective interference protection rules. Other new regulations included barring financial relationships between a translator licensee and the licensee of the station being rebroadcast when the translator signal went beyond the originating station's protected contour and into the service area of another full-service radio station.

In that proceeding, the FCC went on to reject the proposals to turn FM translators into originating low power facilities. There the agency determined that no compelling need had been demonstrated for that proposal and that the concept was fraught with technical and policy problems.[27]

During the same period when the FCC reformed its FM translator rules, the Commission took parallel action involving a party seeking to employ a translator as a method for entering a radio market by "rebroadcasting" a signal of a station being programmed, not for the service area of the station, but for the service area of the translator. Here the FCC rejected the plan[28] – a plan functionally the same as originating LPFM stations.

Thus, in the recent past, the Commission has taken steps to ensure that: (1) the FM radio spectrum is populated by facilities using that spectrum efficiently; and (2) full-service radio stations and their listeners are not subjected to new interference through any expansion of the FM translator service into an LPFM-like service. There is no reason for the Commission to make a different decision in the instant rulemaking proceeding.

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[26] *See Report and Order* in MM Docket No. 88-140, 5 FCC Rcd 7212 (1990).
[27] *Id.* at ¶¶ 48-52.
[28] *See In Re Gerard A. Turro*, 2 FCC Rcd 6674 (1987); aff'd 859 F.2d 1498 (D.C. Cir. 1988).

III. THE COMMISSION'S PROPOSALS WOULD CREATE INTOLERABLE INTERFERENCE TO FM RADIO STATIONS AND TO THEIR LISTENERS

Any assessment of the interference that might be caused by LPFM facilities must be viewed in the context of the present interference environment for FM radio. That environment has been affected by a wealth of FCC decisions.

FM band congestion became a significant factor on the radio landscape as the result of the Commission's Docket 80-90 proceeding.[29] In this rule making, the FCC established several new classes of FM stations, along with the paring back of the mileage separations that had been accorded full-service facilities vis-à-vis the operation of co-channel and adjacent-channel FM stations. Nearly 1000 FM allotments were "dropped" into communities across the country; other allotments continue to be added in accordance with Docket 80-90 allocations principles. On several occasions, this further crowding of the FM spectrum has been criticized by FCC officials, as well as by broadcasters, advertisers and others with a stake in the over-the-air radio service.

Later in the 1980s, the Commission appeared to have learned its Docket 80-90 lesson and recognized the importance in maintaining interference-free broadcast service when it considered proposals to increase, across-the-board, the power output of Class A FM stations. In that proceeding the Commission honored interference considerations and only gave power increase benefits where they would not create new interference to the FM service provided by other FM stations operating co-channel or adjacent-channel to the Class A stations seeking increases.[30]

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[29] *See Report and Order* in BC Docket No. 80-90, 94 FCC 2d 152 (1983).

[30] *See First Report and Order* in MM Docket No. 88-375, 3 FCC Rcd 5941 (1988). This decision involving Class A FM stations in analogous to the ones taken by the FCC in proceedings involving AM daytime-only stations. There the FCC allowed certain AM daytimers to increase power and/or hours of operation where these changes would not significantly

Yet, the Commission proposes here to follow the much-criticized Docket 80-90 approach by adding additional classes of stations and again cutting back the interference protections currently relied upon by broadcasters and the listeners they serve. Moreover, the Commission is nearing another decision point that could provide yet additional interference to FM broadcasting – even prior to any resolution of the current LPFM proposals.

Among the proposals in the Commission's still pending "technical streamlining" rulemaking proceeding[31] is the revision to Section 73.215 of its Rules to allow for reduced minimum separation requirements for second-adjacent channel and third-adjacent channel stations. The agency also proposes, in that proceeding, to allow "negotiated interference" among stations in the FM radio service.

These Commission proposals are designed to afford licensees with additional flexibility in siting and modifying FM facilities. While such tools might prove beneficial in specific cases, there is concern that these rule changes – if adopted – might lead to significant further congestion on the FM band.

Even if the Commission were to maintain its current technical interference standards for FM radio, the introduction of an LPFM radio service would result in millions of radio listeners losing service upon which they rely each day. This is because radio listeners have genuine access to radio service at locations beyond these stations' "protected service contours." Thus, the "shoe-horning-in" of new LPFM or microradio facilities would eliminate a wide range of actual listening. An earlier depiction of such listening is found in a study submitted to the FCC

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diminish the service provided by other classes of stations. *See, e.g. First Report and Order* in BC Docket No. 82-538, 54 RR 2d (P&F) 951 (1983).

[31] *See Notice of Proposed Rule Making* in MM Docket No. 98-93, FCC 98-117, released June 15, 1998.

more than ten years ago by the National Association of Broadcasters ("NAB"). This radio listening study[32] showed dramatic levels of listening in all sized markets – with listening attributed to "local" stations and to stations far distant geographically from the listener.[33] That is, even if the Commission were to respect and maintain its current interference protection criteria for FM radio, the addition of LPFM and/or microradio facilities undoubtedly would take away established service from radio listeners.

However, the FCC's proposals are more serious. Recognizing that few if any LPFM facilities could be added in major urban areas if existing interference protection standards were maintained, the Commission proposes to eliminate 3rd adjacent channel protection and even 2nd adjacent channel protection to existing stations in order to insert low power facilities into an already congested radio spectrum.

The consequences of any such action would be severe. Indeed, by taking such an action the FCC would, in every practical sense, abandon the most fundamental principles by which it has allocated, licensed and regulated the radio spectrum. Such steps would constitute a virtual "AM-ization" of the FM band. By allowing new low power facilities to fill in the interstices among existing stations, the Commission would follow the AM precedent which has lead to rampant interference on that band. Indeed, in its "AM Improvement" proceedings in recent years, the Commission has acknowledged how these AM radio allocations policies have been severely injurious to AM radio stations and to AM listening. Moreover, in these AM Improvement proceedings the FCC has taken steps to help heal some of these wounds. By

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[32] *See NAB National Audience Listening Study,* submitted into the record of MM Docket No. 88-140 on November 4, 1988.

[33] The data upon which the NAB study was based were from the Arbitron "Total Audience Listening Output" ("TALO") information taken from ratings diaries. These data depict the call letters of stations reported in the diaries of survey participants.

imposing more demanding technical interference protection standards on changes in AM facilities[34] and also mandating compliance with the NRSC-1 and NRSC-2 standards[35] the FCC has been taking actions to improve AM radio that are virtually the opposite of what the Commission would have in store for FM if it adopted its LPFM and/or microradio concepts.

It is not only broadcasters who oppose this LPFM plan. In comments submitted on June 1, 1999, the FAA has expressed its complete opposition to the proposed creation of LPFM and/or microradio facilities. The FAA's concerns center on the likely interference effects of low power FM radio operations on the reliability and safety associated with air navigation operations.

Concerning the effects on radio reception were the FCC to reduce or eliminate 3rd adjacent channel and even 2nd adjacent channel protection, the record in this proceeding is being benefited by a number of in-depth technical studies – studies that we hope the Commission will review with great care. One such study is being submitted today in the comments of the NAB. Another study, along much the same lines, has been developed to support the comments of the Consumer Electronics Manufacturers Association ("CEMA"). Each study yields the same basic conclusion: reduction of interference protection standards will severely reduce the reception that listeners currently enjoy from established radio stations and current radio receivers.

Earlier this decade the Commission was presented with useful and compelling information about the ability – and inability – of FM radio receivers to demonstrate immunity from various levels of adjacent channel interference. Submitted in the Commission's proceeding

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[34] *See, e.g. Report and Order* in MM Docket No. 87-267, 6 FCC Rcd 6273 (1991).
[35] *See Report and Order* in MM Docket No. 88-376, 4 FCC Rcd 3835 (1989). These two standards, developed by the National Radio Systems Committee and then adopted by the FCC, serve to reduce adjacent channel interference among AM stations.

addressing "grandfathered, short-spaced" radio stations,[36] these data[37] showed that significant reductions in radio reception would be created if the Commission were to reduce or eliminate certain adjacent channel protections.

But, in the instant LPFM proceeding, the Commission unwisely proposes to reduce interference protections that are essential to maintaining reliable FM radio reception. In a study[38] prepared for the NAB by Carl T. Jones Corporation, an engineering consulting firm, the FCC is presented with comprehensive and compelling information that must lead it to the conclusion to maintain 2nd and 3rd adjacent channel protections -- particularly in the context of LPFM.

The NAB study tested a sample of 28 "modern" radio receivers. The test procedures examined the susceptibility these receivers to varying levels of co-channel and adjacent-channel interference. However, because the Commission does not propose to change either the co-channel or 1st adjacent-channel protection ratios, the report based on the data gathered addressed primarily the test results for 2nd and 3rd adjacent-channel interference.

This receiver study offers conclusions similar to those in the receiver report NAB submitted into the record of the Commission's proceeding exploring rules for "grandfathered, short-spaced" FM radio facilities.[39] In essence, the study provides data in support of the conclusion that contemporary receivers do not possess the degree of interference-rejection capacity that might support paring back of 2nd adjacent or even 3rd adjacent-channel protection.

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[36] *See Notice of Proposed Rule Making* in MM Docket No. 96-120, FCC 96-236, released June 14, 1996.
[37] *See* "FM Receiver Performance in the Presence of Second Adjacent Channel Interference," Reply comments of NAB in MM Docket No. 96-120, filed October 4, 1996, at Appendix II.
[38] "FM Receiver Interference Test Results Report," Carl T. Jones Corporation, July 1999.
[39] *See* Note 37, *supra*.

According to this latest NAB receiver study, significant interference to radio reception would occur if a LPFM station were to move within a full-service facility's otherwise protected signal strength contour.

Also being submitted today are data from a study prepared on behalf of CEMA. The CEMA study also finds that severely negative consequences would occur to radio listening were the FCC to adopt its low power proposals.

The CEMA laboratory tests were conducted to document the sensitivity of consumer FM receivers to interference created by other FM band signals. The tests were divided into seven sub-tests:

1. Laboratory Calibration and Receiver Certification
2. Interference
3. Post-Detection Noise
4. Intermediate Frequency Taboo and Local Oscillator Interference
5. Reduced Undesired Modulation
6. Performance in on-air Environment
7. Intermodulation with 800 kHz Channel Spacing

The data generated by this study support the conclusion that much of the interference that would be created by LPFM facilities would not be rejected by radio receivers -- with the end result being losses in existing service to full-service radio stations and their audiences.

IV. ANY INTRODUCTION OF LOW POWER FM SERVICES SEVERELY WOULD THREATEN THE DEVELOPMENT AND SUCCESS OF IBOC DIGITAL BROADCASTING

The Commission's *Notice* acknowledges[40] the ongoing efforts to develop and then implement a system whereby existing radio stations (in both the FM and AM services) would be

[40] *See Notice, supra* note 2 at ¶¶ 47-49 and Appendix C.

presented the opportunity to transmit digital broadcast signals, along with their current analog signals, using existing licensed spectrum. The development of IBOC digital broadcast technology is still in its embryonic stages. Making IBOC digital radio work effectively, employing relatively small amounts of available spectrum inside existing stations' bandwidth, is a daunting task under any scenario. And the success of these IBOC proponents – and IBOC itself – will be governed, in part, by the nature of the interference environment under which IBOC testing and later deployment would occur. If the levels of interference experience by broadcast stations does not produce a "nurturing" environment for IBOC development, then this technology likely will never come into reality.

Three IBOC digital proponents currently are working on their respective systems.[41] The final result of the proponents' testing will be submitted on December 15, 1999, to the National Radio Systems Committee. One proponent – USADR – has filed a petition for rule making,[42] asking the Commission to institute proceedings that will consider adoption of rules under which an IBOC standard could be set and IBOC technology would be deployed.

Surely the Commission should take no steps – in this LPFM proceeding or elsewhere – that might serve to threaten the successful development and implementation of IBOC digital radio. IBOC could bestow upon radio stations and the listeners they serve a wealth of new benefits, ranging from much improved signal clarity to a variety of new ancillary data distribution services.

Again, IBOC development is still in its initial, critical stages. The full implications of reduced adjacent channel interference protection is being determined as the record of this LPFM

[41] These proponents are Digital Radio Express, Lucent Digital Radio, Inc., and USA Digital Radio Partners, L.P. ("USADR").
[42] USADR Petition for Rule Making (RM-9395), filed October 7, 1998.

proceeding is being gathered. Because of these issues of LPFM regulatory timing and the pace of IBOC system development, it is in the best interests of the FCC, broadcasters and the public for the agency, if it does not reject all LPFM and micropower concepts out of hand, at least to defer from taking any action in this proceeding that might ultimately work against the advancement of the broadcast radio service through IBOC technology.

The FCC has declared itself to be an advocate of this IBOC system development.[43] It thus should ensure that its regulatory steps in related proceedings, such as this one, do not work against the prospects for IBOC success. Allowing new LPFM stations to populate the radio band during these critically-important stages of IBOC development simply would be irresponsible. Entercom Communications Corp. ("Entercom") expressed this same concern in its comments regarding this *Notice*:

> "...any relaxation of the adjacent channel spacing requirements could potentially aggravate IBOC developers' already difficult task of achieving [IBOC success]."[44]

Along these same lines Trumper Communications ("Trumper") states in their comments:

> (i)t is prudent that the Commission should first determine what is necessary for development of the IBOC radio service. We would not want our transition to the digital world curtailed by the elimination of the current protection standards which IBOC proponents have used to develop their system.[45]

Myriad other broadcasters thus far filing comments in this proceeding have made much the same observation and plea: that the elimination of the second-adjacent and third-adjacent

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[43] *See, e.g.* Joint Statement of Chairman William E. Kennard and Commissioner Gloria Tristani, and separate statements of Commissioners Susan Ness, Harold Furchtgott-Roth and Michael D. Powell, appended to the Commission's LPFM *Notice*.

[44] Comments of Entercom in MM Docket No. 99-25, filed June 4, 1999, at 2.

[45] Comments of Trumper in MM Docket No. 99-25, filed May 25, 1999, at 1

channel interference protection standards, in order to aid the addition of LPFM facilities to the FM radio landscape, will harm FM radio's transition to IBOC digital transmission.

The SCBA urges the Commission, if it does not reject LPFM and microradio completely, to defer any further consideration of LPFM or microradio operations until the time that IBOC technology has been deployed. Only then, through testing of ongoing operations, may the Commission be positioned to develop the most useful record as to what any introduction of low power services, and/or reducing any adjacent channel protection standards, would have on IBOC as well as analog reception.

Insofar as the effect of such interference on IBOC development is concerned, rejection or at least deferral of any further consideration of LPFM and microradio would be consistent with Section 7 of the Communications Act. That section provides that "...it is the policy of the United States to encourage the provision of new technologies and services to the public."[46] It further establishes a presumption that such services are consistent with the public interest and places the burden on any opponent of such a service to show otherwise.

V. ANALOG FM AND DIGITAL FM BROADCASTING SHOULD NOT BE IMPERILED BY EFFORTS TO EFFECT WHAT MAY BE ONLY LIMITED INCREASES IN THE ALREADY EXISTING AND GROWING LEVELS OF PROGRAM AND OUTLET DIVERSITY.

Never before have Americans had access to as many audio (as well as video) program outlets and program diversity as is the case today. This undisputed fact places in great question the foundation of the LPFM and microradio proposals. We are living in an era of media abundance, where virtually every opinion has an opportunity for dissemination to audiences

[46] 47 U.S.C. § 157(a).

seeking that information. In the context of creating LPFM facilities, more is not necessarily better.

Any impartial observer of the Commission's proceeding here must question the need for creation of LPFM and/or microradio when the nation already is basking in electronic program diversity. Indeed, if the Commission declined to take similar LPFM steps one, two or even five decades ago when the levels of electronic program and outlet diversity were far less than they are today, why should it take these actions now?

Radio listeners in all sized markets already benefit from numbers of licensed radio stations that never have existed before. And, in addition to over-the-air, terrestrial radio, multitudes of other audio outlets are available or soon on the way. Cable radio is a common facet of cable television operations. Early in the next millennium we will see the inauguration of direct, satellite-delivered audio. These facilities will have full or near nationwide service areas and reportedly will deliver programming aimed at both mass and niche audiences.

The Commission seems intent on ignoring the video diversity provided by local television stations, DBS facilities, MMDS services and cable operations (along with the open video systems and other video operations being offered in many markets by entities such as power companies and telephone interests). But, the existence of these program sources is an integral part of any calculus as to the diversity available to consumers.

Moreover, these video services also provide audio channels, as likely will local television stations employing their excess digital capacity when they switch to DTV technology – a process completed in many major markets and now sweeping the country according to the FCC-imposed conversion timetable.

Even more compelling is the staggering growth of the internet and the provision, across the web, of audio streaming and limitless audio files. Indeed, now every person in America can be a broadcaster – and reach a worldwide audience. And with the cost of multimedia computers plummeting each day, more and more members of our society – including the disadvantaged – are obtaining access to hear and to speak over these cyber-media. This access is occurring in homes, schools, libraries and community centers, among other locations.

The Commission, thus, must juxtapose the huge amounts of program and outlet diversity that exist in this country against the havoc that LPFM and microradio station interference would cause to established radio service. It is a matter not just of technical standards but also of equity and fairness.

Thousands, sometimes hundreds of thousands of dollars or more, have been spent by stations to achieve the technical ability to compete in complex, advertising media marketplace. They have done so by investing in technical facilities that provide high quality sound to audiences and to advertising/public service clientele. It would be wholly unfair for this investment – and the public reliance on the service provided through this investment – to be threatened and impaired by low-cost and likely technically-unsophisticated low power gear.

This LPFM interference effect would unnecessarily impact broadcasters' investments in their facilities, would make over-the-air FM radio a less viable medium for advertising and other message dissemination and would provide listeners with signals offering less than acceptable technical quality. New interference from low power facilities could disrupt programs that people rely upon. School closings, weather reports, traffic conditions and news reports are but some of the kinds of programs that may not reach intended audiences when subjected to new interference.

VI. LPFM LICENSING AND INTERFERENCE RULES WOULD BE LARGELY UNENFORCEABLE

Surely there would be significant costs and complexities involved in the licensing of any LPFM or microradio service facilities to what would be a flood of applicants. How would the agency award licenses? Would an auction process apply in most instances? What about a noncommercial service -- how would these licenses be awarded? But, these questions would only be a small part of the budgetary and regulatory problem. Particularly in light of the pirate-foundation to the LPFM movement, there is even greater concern over the clear inability of the FCC to regulate any such new services, especially in the areas of signal interference and technical rule compliance.

Over the past ten years, and for reasons based on the agency's limited budget resources, the Commission has closed many of its field offices and greatly has diminished its ability to carry out its initial role of the "policeman" of the airwaves. Plainly, the FCC does not have the budget or the personnel to take handle all these tasks. As MacDonald Garber Broadcasting put it in comments submitted to the FCC:

> We are having a very hard time getting the current workload through the [C]ommission in a timely fashion; this will just add more delays to the already untimely responses to current action. If the FCC cannot handle to 10,000 or so commercial stations now, how in the world will it handle the additional low power FM signals, along with the transition to digital signals?[47]

But, beyond the issues of initial licensing, license renewals and the many other administrative issues set forth in the Commission's *Notice*, the overarching concern deals with controlling and regulating interference from these low power facilities. It is more than obvious

[47] Comments of MacDonald Garber Broadcasting, Inc. in MM Docket No. 99-25, filed May 20, 1999 at 1.

that any LPFM or microradio scenario would be filled with examples of licensees, disappointed with the coverage attainable with their assigned wattage, seeking higher power and often using "self help" means to achieve ERP increases. Also, even if the Commission were to require that some or all LPFM facilities operate only on a noncommercial basis, what mechanism would exist to enforce that restriction effectively?

It has taken an enormous effort for the FCC to close down scores of pirate radio broadcasters. But, that task would be dwarfed by the effort required to maintain regulatory control of LPFM and/or microradio services. Surely the Commission can employ its predictive judgment and take steps now to avoid the chaos that otherwise would result were it to authorize LPFM facilities.

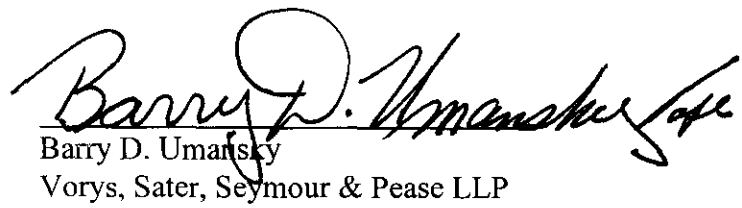
VII. CONCLUSION

In these comments the SCBA has submitted a number of technical and policy observations and arguments that support Commission rejection of its LPFM and microradio proposals. Today SCBA is joined by many other broadcast and broadcast-related parties also criticizing the FCC's LFPM plan as misguided and threatening to the digital future of the radio medium.

We urge the Commission to adopt a ruling in this proceeding that is faithful to its initial mandate from Congress -- the control of interference on the radio frequency spectrum. Particularly at a time when the American public enjoys record levels of program diversity from radio and from all other electronic media, the Commission should not jeopardize the technical integrity of FM radio in the name of adding questionable and likely very limited levels of additional programming choices.

Respectfully submitted,

Southern California Broadcasters Association, Inc.
5670 Wilshire Boulevard, Suite 910
Los Angeles, California 90036



Barry D. Umansky
Vorys, Sater, Seymour & Pease LLP
1828 L Street, N.W.
Eleventh Floor
Washington, DC 20036-5109
202-467-8822

Counsel to the
Southern California Broadcasters Association, Inc.

August 2, 1999

EXHIBIT A

SCBA Member Stations 8/2/99

Station/Company	City
KABC (KDIS/KLOS)	Los Angeles
KACE (KFI/KOST/KRTO)	Los Angeles
KALI AM (KALI FM)	Pasadena
KALI FM (KALI AM)	Pasadena
KAVC	Lancaster
KAVL (KAVS)	Lancaster
KAVS (KAVL)	Lancaster
KBBY (KHAYIKVEN)	Ventura
KBHR	Big Bear City
KBIG (KLAC)	Glendale
KBUA (KKHJIKBUE/KWIZ AM)	Santa Ana
KBUE (KKHJIKWIZ AM/KBUA)	Hollywood
KCAL (KSZZ)	San Bernardino
KCBS	Los Angeles
KCHJ (KWAC/KIWI)	Bakersfield
KCMG	Los Angeles
KCTD 'One on One Sports"	Burbank
KDAR	Oxnard
KDIS (KABC/KLOS)	Los Angeles
KEZY (KORG)	Anaheim
KFI (KOSTJKACEIKRTO)	Los Angeles
(KFMB FM)	San Diego
FM (KFMB AM)	San Diego
(KXFG)	Colton
KFSG	Los Angeles
KFWB	Los Angeles
KGGI (KKDD)	Riverside
KGIL (KKGO/KGXL)	Los Angeles
KGMX (KHJJ/KLK)QKUTY)	Palmdale
KGXL (KKGOIKGIL)	Los Angeles
KHAY (KVEN/KBBY)	Ventura
KHJJ (KGMX)	Palmdale
KHWY, Inc.	Los Angeles
KIEV (KKLNKLTX)	Glendale
KIIS (KXTA)	Burbank
KIKF FM	Anaheim
KIWI (KWACIKCHJ)	Bakersfield
KKBT	Los Angeles
KKDD (KGGI)	Riverside
KKGO (KGIL/KGXL)	Los Angeles
KKHJ (KBUEJKWIZ AM/KBUA)	Hollywood
KKLA (KIEVIKLTX)	Glendale
KKSC (KSIQ)	Brawley
KLAC (KBIG)	Glendale
KLAX	Los Angeles
KLLY (KNZR)	Bakersfield
KLOS (KABC/KDIS)	Los Angeles
KLSX (KRLA)	Los Angeles
KLTX (KKLA/KIEV)	Glendale
KLVE (KTNQ/KSCA)	Los Angeles
KLYY (Y107)	Los Angeles

Station/Company	City
KNX	Los Angeles
KNZR (KLLY)	Bakersfield
KOST (KFI/KACE/KRTO)	Los Angeles
KPLS	Orange,
KPRZ	San Diego
KPSI AM (KPSI FM)	Palm Springs
KPSI FM (KPSI AM)	Palm Springs
KPWR	Burbank
KRLA (KLSX)	Los Angeles
KROQ	Burbank
KRTH	Los Angeles
KRTO (KFI/KOST/KACE)	Los Angeles
KSCA (KLVE/KTNQ)	Los Angeles
KSDO (KPOP/KOGO)	San Diego
KSIO (KKSC)	Brawley
KSSE	Los Angeles
KSZZ (KCAL)	San Bernardino
KTNQ (KLVE/KSCA)	Los Angeles
KTWV	Culver City
KTYM	Inglewood
KUSC	Los Angeles
KVCA	Los Angeles
KVEN (KHAY/KBBY)	Ventura
KWAC (KCHJ/KIWI)	Bakersfield
KWIZ AM (KKHJ/KBUE/KBUA)	Santa Ana
KWKW	Los Angeles
KWRP	Hemet
KWXY AM (KWXY FM)	Cathedral City
KWXY FM (KWXY AM)	Cathedral City
KXFG (KFRG)	Colton
KXMX (KEZY)	Anaheim
KXTA (KIIS)	Burbank
KYSR	Burbank
KZLA	Los Angeles